VARD LAW REVIEW, 233. Among the States which apply this rule there are some, including New York itself, which hold that a promise by a bank to its depositor that it will pay the depositor's debts to third persons (check-holders) will not support an action by the check-holders against the bank. It is hard to see how the cases can be reconciled on any principle, but as there is no common law principle at the bottom of the rule in *Lawrence* v. *Fox*, the inconsistency may presumably be treated as a determination on the part of those courts to narrow the scope of the rule, and not to apply it where the third party is merely one of an undetermined class of the promisee's creditors, instead of being a single creditor definitely named by the contracting parties.

The New York court in *Ætna Bank* v. *Fourth Bank* (46 N. Y. 82, 87) endeavored to distinguish the cases as follows: "*Lawrence* v. *Fox* was upon an express promise to pay a sum of money, received by the defendant from a debtor of the plaintiff, to the plaintiff; and the promise was the consideration upon which, and upon which alone, he received the money. . . . Here the defendant was a debtor upon a general banker's account; there was no special loan on an express promise to pay the plaintiff." In New Jersey this inconsistency exists (*Huyler's Executors* v. *Atwood*, 26 N. J. Eq. 504; *Creveling* v. *Bloomsbury Bank*, 46 N. J. Law, 255); and in Pennsylvania also (*Merriman* v. *Moore*, 90 Pa. St. 78; *First Bank* v. *Shoemaker*, 117 Pa. St. 94); but in the latter State they allow a suit if the check is for the whole amount of the deposit (*Saylor* v. *Bushong*, 100 Pa. St. 23), on the theory that such a check is an assignment of the funds in the bank, — an objectionable doctrine, it would seem, when it is remembered that a bank, instead of holding any specific funds of the depositor, is merely his debtor, and that a check is an order to pay, in the nature of an unaccepted bill of exchange. In Maryland and Michigan, states which follow *Lawrence* v. *Fox*, the courts seem to deny the right of a check-holder to sue the bank, although the point does not appear to have been directly adjudicated. (*O'Neal* v. *School Commissioners*, 27 Md. 227; *Moses* v. *Franklin Bank*, 34 Md. 574; *Crawford* v. *Edwards*, 33 Mich. 354; *Brennan* v. *Merchants' Bank*, 62 Mich. 343.) Perhaps the most interesting example of this inconsistency is in Colorado. In *Lehow* v. *Simonton* (3 Colo. 346), a third party, to whom the money was by the contract to be paid, was allowed to sue on the contract; but in *Boettcher* v. *Colorado Bank* (15 Colo. 16), a suit by a check-holder against the bank was decided in favor of the bank; one judge, however, feeling himself bound by *Lehow* v. *Simonton*, dissented, on the ground that the cases were indistinguishable.

A number of authorities on this point are cited in a recent and carefully considered case in Ohio (*Cincinnati H. & D. R. R. Co.* v. *Metropolitan Bank*, 42 N. E. Rep. 700), which holds that the check-holder has no right of action against the bank for refusal to pay the check.

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CONVERSION BY A PLEDGEE. — Two recent cases, *Waring* v. *Gaskill*, 22 S. E. Rep. 659 (Ga.), and *Richardson* v. *Ashby*, 33 S. W. Rep. 806 (Mo.), are authority for the proposition that where a pledgee tortiously sells his pledge, or repledges it for a greater sum than the debt for which it is security, the pledgor has an immediate right to bring an action in trover without tendering the amount of his indebtedness. What little law

there is on this subject is unsettled. It would seem the more natural step to bring an action for violation of the contract of pledge, or to tender payment before bringing the action of trover. In the action on the contract, at least, an equitable defence would be allowed. The plaintiff's damages would be diminished by the amount of his debt to the defendant, the pledgee.

On the precise question involved in the two cases cited there is a conflict of opinion. In England the law is contrary to these authorities. The first English case on the subject, *Johnson* v. *Stear*, 15 C. B. N. S. 330, held that the pledgee's act was conversion, but that the amount of damages should be only the pledgor's actual loss, — that the pledgee's interest in the pledge at the time of the conversion should be taken into account. Mr. Justice Williams in an able dissenting opinion maintained that the pledgee stood in practically the same position as a factor, — that by his act the pledgor regained immediate right of possession, and was entitled to judgment in trover for the full value of the goods. Obviously, if there was conversion at all, full damages should have been awarded. Two later cases, *Donald* v. *Suckling*, L. R. 1 Q. B. 585, and *Halliday* v. *Holgate*, L. R. 3 Ex. 299, practically overruled *Johnson* v. *Stear* by holding that there was no conversion. To support this view, the court maintained that a pledge is something more than a mere bailment, and that the pledgee, by parting with possession, does not lose his special property in the pledge. Mr. Justice Shee dissented in *Donald* v. *Suckling* on the grounds put forth by Mr. Justice Williams in the earlier case. Nevertheless, these two cases represent the English law.

In the United States the question is still open. Some courts adopt the English view without question or hesitation. Others maintain the views adopted by Georgia and Missouri courts. The English doctrine would seem to be the less satisfactory. There is no cogent reason for holding that the pledgee gets so much more extended rights than a bare bailee that he can dispose of the article pledged without losing his lien. It would seem more natural and consistent that, apart from the privilege of pledging up to the amount of the original security, — a proceeding which in no way affects the first pledgor's position, — the pledgee should have no more right than the factor holding his principal's goods, on which he loses his lien in parting with possession. Just as the pledgor may maintain trover for destruction of the pledged goods by the negligence of the pledgee, so should he be allowed trover when the pledgee has repledged the goods for an amount greater than the original pledgor's indebtedness to him.

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RESPONDEAT SUPERIOR IN THE CASE OF CHARITABLE CORPORATIONS. — Is the doctrine of *respondeat superior* to be applied to charitable corporations? A *résumé* of the judical decisions in point may start appropriately with the case of *Duncan* v. *Findlater*, 6 Cl. & Fin. 894 (1839), decided on appeal from the Scotch Court of Session. The only importance of the case lies in a dictum by Lord Cottenham to the effect that the funds of a body incorporated for public purposes can never be diverted from those purposes to the payment of damages which are recovered for injuries caused by the negligence of the servants of the corporation; and that a suit for such damages is consequently idle, and will not be entertained by the courts. This view was reaffirmed and applied to charitable corporations